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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,004	02/27/2004	Samuel A. Vona JR.	SPG6611PDUS	6885

27624 7590 01/22/2010

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EXAMINER	
MERCIER, MELISSA S	

ART UNIT	PAPER NUMBER
1615	

NOTIFICATION DATE	DELIVERY MODE
01/22/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPANI.PATENT@AKZONOBEL.COM

Office Action Summary	Application No.	Applicant(s)	
	10/789,004	VONA, SAMUEL A.	
	Examiner	Art Unit	
	MELISSA S. MERCIER	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 October 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *18 and 20-35* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *18 and 20-35* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Summary

Receipt of Applicants Remarks filed on October 13, 2009 is acknowledged. Applicant has not amended any of the claims. Therefore, claims 18 and 20-35 remain pending in this application.

Maintained Rejections

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 18, 20-22, and 25-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over National Starch and Chemical Corp (GB 1,285,547) in view of Syed et al. (EP 0 829 255).

GB'547 discloses a hair setting composition comprising pregelatinized cationic high amylose containing starch (title, page 3, lines 85-91). The application of the composition to wet or dampened hair provides a film which can impart desirable properties such as body and smoothness (page 1, lines 16-28). The amylose content is more than 50% by weight of the starch (page 1, lines 51-52). The high amylose starch is present in the amount of 1-6% by weight of the total composition (page 1, lines 47-49).

It is additionally disclosed the composition can be utilized as a crème rinse which is applied after the users hair is washed and serves to effectively balance or neutralize the inherent negative charge of the hair (page 2, lines20-35).

The amylose may be from corn (page 2, lines 36-40). Other film forming ingredients may be added (page 2, lines 65-69).

GB'547 does not disclose applying the composition to artificially colored hair.

Syed discloses a hair protection composition and process for preserving chemically process hair during subsequent processing's by applying a composition comprising a starch hydrolysate (abstract). Chemical processes include dyes and bleaching (page 2, lines 15-16), which reads on Applicants artificially colored hair in the instant claims. Syed discloses repeated coloring and bleaching cause structural damage to the hair and suffer the disadvantage of causing excessive damage to hair fibers (page 2, lines 57-58). Syed further discloses film forming polymers such as polypolyquaterniums (page 5, lines 32-35).

Since it is well known, as disclosed by Syed, the color treatment of hair causes damage, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the amylose as disclosed by GB'547 since it is taught that the amylose provides a protective property to the hair, such as smoothness and body. Since the prior art discloses the same patient population, (i.e. those with color treated hair), application of the product to perform a moisturizing property, would also necessarily also perform the same functional property of providing durability and stability to the hair color. "[T]he discovery of a previously unappreciated

property of a prior art composition, or of a scientific explanation for the prior art's functioning, does not render the old composition patentably new to the discoverer." *Atlas Powder Co. v. Ireco Inc.*, 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999). Thus the claiming of a new use, new function or unknown property which is inherently present in the prior art does not necessarily make the claim patentable. *In re Best*, 562 F.2d 1252, 1254, 195 USPQ 430, 433 (CCPA 1977)

Claims 18, 20-21, 23-25, and 28-35 rejected under 35 U.S.C. 103(a) as being unpatentable over Paul et al. (US 6,344,183) in view of in view of Syed et al. (EP 0 829 255).

Paul discloses a hair cosmetic composition comprising nonionically derivatized starches (abstract). The starch is present from 0.5-15% of the composition (column 2, lines 36-38). Suitable starches include high amylose corn starch (column 3, lines 40-44). High amylose is at least about 45% by weight amylose (column 3, lines 47-49), which would reasonably read on claim 20's "about 50% by weight". Film forming agents can be included (column 1, lines 46-47). The formulation may be in the form of lotions and creams (column 8, lines 1-2 and 45-48).

Paul does not disclose applying the composition to artificially colored hair.

Syed discloses a hair protection composition and process for preserving chemically process hair during subsequent processing's by applying a composition comprising a starch hydrolysate (abstract). Chemical processes include dyes and bleaching (page 2, lines 15-16), which reads on Applicants artificially colored hair in the

instant claims. Syed discloses repeated coloring and bleaching cause structural damage to the hair and suffer the disadvantage of causing excessive damage to hair fibers (page 2, lines 57-58). Syed further discloses film forming polymers such as polypolyquaterniums (page 5, lines 32-35).

Since it is well known, as disclosed by Syed, the color treatment of hair causes damage, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the amylose as disclosed by Paul since it is taught that the amylose provides a protective property to the hair, such as smoothness and body. Since the prior art discloses the same patient population, (i.e. those with color treated hair), application of the product to perform a moisturizing property, would also necessarily also perform the same functional property of providing durability and stability to the hair color. "[T]he discovery of a previously unappreciated property of a prior art composition, or of a scientific explanation for the prior art's functioning, does not render the old composition patentably new to the discoverer." *Atlas Powder Co. v. Ireco Inc.*, 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999). Thus the claiming of a new use, new function or unknown property which is inherently present in the prior art does not necessarily make the claim patentable. *In re Best*, 562 F.2d 1252, 1254, 195 USPQ 430, 433 (CCPA 1977)

Response to Arguments

Applicant's arguments have been fully considered but they are not persuasive. Applicant argues:

***The present invention is a method of extending or improving the color durability and stability of artificially colored hair by applying a composition comprising pregelatinized amylose containing starch, not to provide a protective benefit to the hair.**

While the Examiner conceded that the particular benefit is not disclosed in the prior art, it is the position of the Examiner that since the prior art discloses the same patient population, (i.e. those with color treated hair), application of the product to perform a moisturizing property, would also necessarily also perform the same functional property of providing durability and stability to the hair color. Applicant has merely identified a new property of the composition which would be a necessary result of the application of the composition.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELISSA S. MERCIER whose telephone number is (571)272-9039. The examiner can normally be reached on 8:00am-4:30pm Mon through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert A. Wax can be reached on (571) 272-0623. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melissa S Mercier/
Examiner, Art Unit 1615

/Robert A. Wax/
Supervisory Patent Examiner, Art Unit 1615